

**United States Department of Labor
Employees' Compensation Appeals Board**

R.S., Appellant)	
)	
and)	Docket No. 17-0603
)	Issued: July 17, 2017
DEPARTMENT OF THE INTERIOR, BUREAU)	
OF RECLAMATION, Grand Coulee, WA,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 23, 2017 appellant, filed a timely appeal from a January 3, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a ratable hearing loss.

FACTUAL HISTORY

On June 14, 2016 appellant, then a 56-year-old hydromechanic, filed an occupational disease claim (Form CA-2) alleging permanent hearing loss due to exposure at work. He first

¹ 5 U.S.C. § 8101 *et seq.*

became aware of his hearing loss on January 21, 2009 and realized that it was causally related to his employment on April 1, 2010. Appellant did not stop work and continued to be exposed to noise.

Appellant submitted an employment history and noted that from 1980 to 1984 he worked for the United States Navy Aviation Structure as a mechanic and welder. He was exposed to noise from shop equipment and welding machines. Hearing protection was supplied. From 1984 to 1995, appellant worked for Exotic Metals Forming Company, an aircraft parts manufacturer, as a welder where he was exposed to noise from sheet metal shop equipment and welders. He was provided hearing protection. From 1995 to 2004, appellant was the owner of Always Welding CEO, an Aircraft parts manufacturer, and was exposed to noise from shop equipment eight hours a day. Hearing protection was worn. From 2004 to the present, appellant worked for the employing establishment as a hydromechanic. He worked on power generators 4 to 10 hours a day and he was exposed to noise from nine generators. Hearing protection was supplied and worn. Appellant submitted a job description for a hydromechanic and also his resume.

Appellant submitted a comprehensive hearing test report performed pursuant to the employing establishment hearing conservation program dated May 9, 2016, which revealed no major change in appellant's hearing compared to his baseline test at date of employment. The audiologist, however, noted that the difference in hearing between appellant's left and right ears indicated that his hearing should be retested using a masking procedure in order to accurately identify hearing levels.

By letter dated June 22, 2016, OWCP advised appellant of the type of evidence needed to establish his claim. In a letter of the same date, it requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure, and hearing protection provided.

On July 11, 2016 appellant responded to OWCP's questionnaire and indicated that he was still exposed to hazardous noise at work every day from 89 to 97 decibels. He first noticed his hearing loss on April 1, 2010. Appellant first related his hearing loss to work exposure after he experienced ringing in his ears and there was a drop on his comprehensive hearing report. He noted never filing a hearing loss claim, never having hearing problems, and not participating in hobbies which involved exposure to loud noises.

On September 14, 2016 OWCP referred appellant, together with a statement of accepted facts, which noted appellant's noise exposure history, to Dr. Randall Fong, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In an October 25, 2016 report, Dr. Fong noted examining appellant on October 25, 2016 and referenced appellant's exposure to workplace noise. He reviewed the employing establishment's audiometric data and noted that appellant had progressive hearing loss, gradual worsening in the right ear at the 3,000 hertz (Hz) range and a gradual worsening in the left ear at the 4,000 Hz range. Dr. Fong diagnosed bilateral sensorineural hearing loss. Examination of the ears revealed bilateral unremarkable auricles, external auditory canals, and tympanic membranes. External auditory canals and auricles were clear and the nasal canal, oral cavity, oropharynx, and hypopharynx were clear. Dr. Fong noted appellant's hearing at the beginning of his federal employment

revealed preexisting hearing loss, and a moderate high frequency loss at 3000 Hz and higher in the left ear and moderate at 4000 Hz in the right. He opined that this loss could have resulted from appellant's occupations prior to 2004. Dr. Fong noted that appellant's present audiometric findings compared to the beginning of exposure show that there was a slight worsening in both ears at the higher frequencies. He opined that this change could be related to the additional noise exposure from 2004 while working at the employing establishment on a more-probable-than-not basis. Dr. Fong noted that appellant had bilateral sensorineural loss that was in excess of what would be normally predicated on the basis of presbycusis. He opined that the workplace exposure was of sufficient intensity and duration to have caused the sensorineural hearing loss. Dr. Fong recommended bilateral hearing aids and opined that the need for the hearing aids, as well as the additional hearing loss, was related in part to his exposure to noise while employed with the Federal Government. Audiometric testing was performed for Dr. Fong on October 25, 2016. Testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed the following: right ear 10, 15, 15, and 35 decibels; left ear 5, 10, 20, and 60 decibels.

On November 3, 2016 OWCP accepted appellant's claim for bilateral sensorineural hearing loss due to noise exposure. It noted that the record established that he would benefit from hearing aids.

On November 9, 2016 appellant filed a claim for a schedule award (Form CA-7).

On November 16, 2016 an OWCP medical adviser reviewed Dr. Fong's report and the audiometric test of October 25, 2016. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in each ear and zero percent binaural hearing loss. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying OWCP's standards for evaluating hearing loss to the results of the October 25, 2016 audiogram. He noted that appellant reached maximum medical improvement on October 25, 2016.

In a decision dated January 3, 2017, OWCP found that although appellant's hearing loss was employment related it was not severe enough to be considered ratable for purposes of a schedule award. It authorized a hearing aid evaluation and fitting bilaterally.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁷ Then, the “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.¹⁰ The Board has concurred in OWCP’s adoption of this standard for evaluating hearing loss.¹¹

OWCP’s procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP’s medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹² It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹³

ANALYSIS

OWCP accepted that appellant sustained bilateral hearing loss due to noise exposure from his federal employment. The issue is whether he has submitted sufficient evidence for a schedule award by establishing a ratable impairment in accordance with the A.M.A., *Guides*.

OWCP properly referred appellant to Dr. Fong regarding his hearing loss. Dr. Fong’s October 25, 2016 examination found that appellant’s bilateral sensorineural hearing loss was due

⁵ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁶ A.M.A., *Guides* at 250 (6th ed. 2009).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

¹³ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

to his workplace noise exposure. On November 16, 2016 an OWCP medical adviser reviewed Dr. Fong's report and found that the hearing loss was not ratable for schedule award purposes. He applied their standardized procedures to the October 25, 2016 audiogram performed for Dr. Fong to determine if appellant's hearing loss was ratable for schedule award purposes.

Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibels losses of 10, 15, 15, and 35, respectively. These decibels were totaled at 75 and were divided by 4 to obtain an average hearing loss at those cycles of 18.75 decibels. The average of 18.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero percent hearing loss for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000 These decibels were totaled at 95 and were divided by 4 to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 23.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a zero percent hearing loss for the left ear. Thus, OWCP's medical adviser concluded that appellant had no permanent impairment of his hearing that warranted a schedule award.

Appellant has not submitted any medical report establishing a percentage of hearing loss which would refute the opinion of Dr. Fong and the medical adviser. The Board therefore finds that appellant does not have a ratable hearing loss under OWCP's standardized procedures for rating hearing loss.

Appellant may, at any time, request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds OWCP properly denied appellant's claim for a schedule award for hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board